

Senate File 2223 - Introduced

SENATE FILE 2223

BY COURNOYER

A BILL FOR

1 An Act relating to disciplinary proceedings under civil
2 service.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 400.18, subsections 1 and 3, Code 2022,
2 are amended to read as follows:

3 1. A person holding civil service rights as provided in
4 this chapter shall not be unreasonably or unjustly removed,
5 discharged, demoted, or suspended arbitrarily, but may be
6 removed, discharged, demoted, or suspended due to any act or
7 failure to act by the employee that is established upon a
8 preponderance of the evidence to be in contravention violation
9 of clearly established law, or city policies, or standard
10 operating procedures, or that in the judgment of the person
11 having the appointing power as provided in this chapter,
12 or the chief of police or chief of the fire department, is
13 sufficient to show that the employee is unsuitable or unfit for
14 employment.

15 3. The city shall have the burden to prove that the
16 act or failure to act by the employee was in ~~contravention~~
17 violation of clearly established law, or city policies, or
18 standard operating procedures, or is sufficient to show that
19 the employee is unsuitable or unfit for employment to include
20 establishing each element of the charge made under section
21 400.22 by a preponderance of the evidence. The city shall
22 have the burden to prove that the punishment imposed upon the
23 employee is reasonable and just under the totality of the
24 circumstances.

25 Sec. 2. Section 400.19, Code 2022, is amended to read as
26 follows:

27 **400.19 Removal, discharge, demotion, or suspension of**
28 **subordinates.**

29 The person having the appointing power as provided in
30 this chapter, or the chief of police or chief of the fire
31 department, may, upon presentation of reasonable and just
32 grounds for such action to the subordinate in writing,
33 peremptorily remove, discharge, demote, or suspend a
34 subordinate then under the person's or chief's direction due
35 to any proven act or failure to act by the employee that is in

1 ~~contravention~~ violation of clearly established law, or city
2 ~~policies, or standard operating procedures,~~ or that in the
3 judgment of the person or chief is sufficient to show that
4 continued employment of the employee is unsuitable or unfit for
5 employment imminently detrimental to the public.

6 Sec. 3. Section 400.26, Code 2022, is amended to read as
7 follows:

8 **400.26 Public trial.**

9 The trial of all appeals shall be public, and the parties
10 may be represented by counsel or by the parties' authorized
11 collective bargaining representative. However, upon the
12 request of the employee, the deliberations of the commission
13 shall be held in closed session.

14 Sec. 4. Section 400.27, subsections 1, 2, and 3, Code 2022,
15 are amended to read as follows:

16 1. a. The civil service commission has jurisdiction to hear
17 and determine matters involving the rights of civil service
18 employees under this chapter, and may affirm, modify, or
19 reverse any case on its merits.

20 b. The commission shall reverse the decision and dismiss the
21 charge with prejudice if the city fails to meet its burden of
22 proof as to any element of the charge.

23 c. If the commission determines that the city proved the
24 employee committed the charge, the commission shall determine
25 whether the removal, discharge, demotion, or suspension of the
26 employee was unreasonable or unjust based upon the totality
27 of the circumstances. For the purposes of this subsection,
28 the commission shall consider factors, including the nature of
29 the conduct at issue, the proportionality of the punishment
30 to the conduct at issue, the employee's work history, whether
31 the employee's compliance with the policy was objectively
32 unreasonable in the circumstances, the employee's defenses or
33 justifications, any mitigating factors, and whether the city,
34 its employees, or the appointing authority acted in accordance
35 with the law, city policies, or standard operating procedures.

1 The commission shall only consider and impose discipline upon
2 the employee for charges proven by the city.

3 d. The final decision of the commission shall be based
4 upon a majority vote of the commission, except that removals
5 shall be upon a unanimous vote, made in writing and shall
6 include findings of fact and conclusions of law relied upon,
7 and reasoning or rationale for the decision, separately stated.
8 The commission shall render and serve its final decision upon
9 the parties within thirty days of the close of the record or
10 trial unless the parties consent to a later date in writing or
11 on the record.

12 2. a. The Except as otherwise provided in this section,
13 the city attorney or solicitor shall be the attorney for the
14 commission or when requested by the commission shall present
15 matters concerning civil service employees to the commission,
16 except the commission may hire a counselor or an attorney
17 on a per diem basis to represent it when in the opinion of
18 the commission there is a conflict of interest between the
19 commission and the city council. The counselor or attorney
20 hired by the commission shall not be the city attorney or
21 solicitor. The city shall pay the costs incurred by the
22 commission in employing an attorney under this section.

23 b. Upon the filing of a notice of appeal pursuant to section
24 400.21, a city attorney, assistant city attorney, or solicitor
25 who represents or has represented the commission shall not
26 represent the city or its officers or employees in an appeal
27 pending before the commission unless the employee waives the
28 conflict of interest in writing or on the record and the
29 commission approves the representation. If the commission is
30 required to hire a counselor or attorney that is not a city
31 attorney, assistant city attorney, or solicitor as provided in
32 this subsection, the city shall pay the costs incurred by the
33 commission in employing an attorney or counselor under this
34 section.

35 3. The city or any civil service employee shall have a

1 right to appeal to the district court from the final ruling or
2 decision of the civil service commission. The appeal shall be
3 taken within thirty days from the filing of the formal decision
4 of the commission. The district court of the county in which
5 the city is located shall have full jurisdiction of the appeal.
6 The scope of review for the appeal shall be ~~limited to a~~
7 trial de novo ~~appellate review without a trial or additional~~
8 ~~evidence.~~

9 Sec. 5. Section 400.27, Code 2022, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 6. In addition to any other remedies and
12 relief provided by law, upon request, the district court may
13 award a prevailing employee reasonable attorney fees, expert
14 fees, and expenses.

15 EXPLANATION

16 The inclusion of this explanation does not constitute agreement with
17 the explanation's substance by the members of the general assembly.

18 This bill relates to procedures governing the removal,
19 discharge, demotion, or suspension of a person holding civil
20 service rights as provided by Code chapter 400.

21 Code section 400.18, governing the initial disciplinary
22 action concerning a person holding civil service rights, is
23 amended to provide that the person shall not be disciplined
24 unless the removal authority establishes by a preponderance of
25 the evidence that the person violated clearly established law
26 or city policies. Current law does not establish a burden of
27 proof and allows disciplinary action for violation of standard
28 operating procedures that indicates the person is unfit to
29 remain in employment.

30 Code section 400.19, relating to disciplinary action
31 of a subordinate, is amended to strike the ability to take
32 disciplinary action for violation of standard operating
33 procedures that indicates the person is unfit to remain in
34 employment.

35 Code section 400.26, concerning trials of appeals of

1 disciplinary action to the civil service commission, is amended
2 to provide that the deliberations of the commission shall be in
3 closed session upon request of the affected employee.

4 Code section 400.27, governing the jurisdiction of the civil
5 service commission, is amended to provide that the commission
6 shall reverse the disciplinary action with prejudice if the
7 city fails to meet its burden of proof as to each element
8 of the charge against the employee. The bill also provides
9 that a decision to remove an employee from employment shall
10 be by unanimous vote. The bill also establishes factors the
11 commission shall consider in determining whether, if the
12 employee committed the alleged violation, the disciplinary
13 action was unreasonable or unjust. The bill also provides that
14 in appeals before the commission, the commission shall hire
15 an attorney or counsel, at the city's expense, who is not the
16 city attorney to represent the commission unless the employee
17 allows the representation in writing or on the record before
18 the commission. The bill further provides that district court
19 review of a decision by the commission shall be by a trial
20 de novo and that the district court may award attorney fees,
21 expert fees, and expenses to a prevailing employee.